

Census Bureau, Commerce

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hearing shall be conducted in accordance with 5 U.S.C. 556 and 557.

(b) *Applicable law for delegated function.* If, pursuant to 13 U.S.C. 306, the Secretary delegates functions addressed in this part to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of action and compromise of claims shall apply.

(c) *Commencement of civil actions.* If any person fails to pay a civil penalty imposed under this subpart, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than five years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) *Remission and mitigation.* Any penalties imposed under § 30.71(b)(1) and (b)(2) may be remitted or mitigated, if:

(1) The penalties were incurred without willful negligence or fraud; or

(2) Other circumstances exist that justify a remission or mitigation.

(e) *Deposit of payments in General Fund of the Treasury.* Any amount paid in satisfaction of a civil penalty imposed under this subpart shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts, other than a payment to remit a forfeiture which shall be deposited into the Treasury Forfeiture fund.

§ 30.73 Enforcement.

(a) *Department of Commerce.* The BIS's OEE may conduct investigations pursuant to this part. In conducting investigations, BIS may, to the extent necessary or appropriate to the enforcement of this part, exercise such authorities as are conferred upon BIS by other laws of the United States, subject, as appropriate, to policies and procedures approved by the Attorney General.

(b) *Department of Homeland Security (DHS).* ICE and CBP may enforce the

provisions of this part and ICE, as assisted by CBP may conduct investigations under this part.

§ 30.74 Voluntary self-disclosure.

(a) *General policy.* The Census Bureau strongly encourages disclosure of any violation or suspected violation of the FTR. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought. The Secretary of Commerce has delegated all enforcement authority under 13 U.S.C. Chapter 9, to the BIS and the DHS.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Census Bureau for its review in determining whether to seek administrative action for violations of the FTR.

(2) The provisions of this section apply only when information is received by the Census Bureau for review prior to the time that the Census Bureau, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(3) While voluntary self-disclosure is a mitigating factor in determining what corrective actions will be required by the Census Bureau and/or whether the violation will be referred to the BIS to determine what administrative sanctions, if any, will be sought, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is within the discretion of the Census Bureau and the BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice (DOJ) for criminal prosecution. In such a case, the BIS or the DHS would notify the DOJ of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the DOJ.

(4) Any person, including USPPIs, authorized agents, or carriers, will not be deemed to have made a voluntary self-disclosure under this section unless the individual making the disclosure did so

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with the full knowledge and authorization of senior management.

(5) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided*—(1) *General*. Any person disclosing information that constitutes a voluntary self-disclosure should, in the manner outlined below, if a violation is suspected or a violation is discovered, conduct a thorough review of all export transactions for the past five years where violations of the FTR are suspected and notify the Census Bureau as soon as possible.

(2) *Initial notification*. (i) The initial notification must be in writing and be sent to the address in paragraph (c)(5) of this section. The notification must include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature, circumstances, and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by paragraph (c)(3) of this section, the disclosure will be deemed to have been made on the date of the initial notification for purposes of paragraph (b)(2) of this section.

(ii) Disclosure of suspected violations that involve export of items controlled, licensed, or otherwise subject to the jurisdiction by a department or agency of the federal government should be made to the appropriate federal department or agency.

(3) *Narrative account*. After the initial notification, a thorough review should be conducted of all export transactions where possible violations of the FTR are suspected. The Census Bureau recommends that the review cover a period of five years prior to the date of the initial notification. If the review goes back less than five years, there is a risk that violations may not be discovered that later could become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as

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a separate violation unless some other section of the FTR or other provision of law requires disclosure. Upon completion of the review, the Census Bureau should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, failure to file EEI, failure to correct fatal errors, failure to file timely corrections;

(ii) Describe all data required to be reported under the FTR that was either not reported or reported incorrectly;

(iii) An explanation of when and how the violations occurred;

(iv) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations; and

(v) A description of any mitigating circumstances.

(4) *Electronic export information*. Report all data required under the FTR that was not reported. Report corrections for all data reported incorrectly. All reporting of unreported data or corrections to previously reported data shall be made through the AES.

(5) *Where to make voluntary self-disclosures*. With the exception of voluntary disclosures of manifest violations under §30.47 (c), the information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to: Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6700, by phone 1–800–549–0595, by fax (301) 763–8835, or by e-mail FTDRegs@census.gov.

(d) *Action by the Census Bureau*. After the Census Bureau has been provided with the required narrative, it will promptly notify CBP, ICE, and the OEE of the voluntary disclosure, acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including

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further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Census Bureau may take any of the following actions:

(1) Inform the person or company making the voluntary self-disclosure of the action to be taken.

(2) Issue a warning letter or letter setting forth corrective measures required.

(3) Refer the matter, if necessary, to the OEE for the appropriate action.

EFFECTIVE DATE NOTE: At 78 FR 16382, Mar. 14, 2013, § 30.74 was amended by revising paragraphs (c)(3)(iv), (c)(3)(v), and (c)(5) and adding paragraphs (c)(3)(vi) and (c)(3)(vii), effective Jan. 8, 2014. At 78 FR 67928, Nov. 13, 2013, the effective date was delayed until Apr. 5, 2014. For the convenience of the user, the added and revised text is set forth as follows:

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(c) * * *

(3) * * *

(iv) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, in-

volved in the activities giving rise to the violations;

(v) A description of any mitigating circumstances;

(vi) Corrective measures taken; and

(vii) ITNs of the missed and/or corrected shipments.

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(5) *Where to make voluntary self-disclosures.* With the exception of voluntary disclosures of manifest violations under § 30.47(c), the information constituting a Voluntary Self-Disclosures or any other correspondence pertaining to a Voluntary Self-Disclosures may be submitted to: Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233-6700, or by fax on (301) 763-8835. Additional instructions are found at *www.census.gov/trade*.

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§§ 30.75-30.99 [Reserved]

APPENDIX A TO PART 30—SAMPLE FOR POWER OF ATTORNEY AND WRITTEN AUTHORIZATION